

OVERVIEW

Brazil has a large and diversified economy that offers US companies many opportunities to export their goods and services. As Brazil's largest single trading partner, the US enjoys a strong reputation in a variety of sectors. This report is one of a series that is published by the US Commercial Service's team of sector experts throughout the year. If you do not see an opportunity for your product here, please check out our other reports at www.buyusa.gov/brazil and consider contacting us directly to find out if we can help you export to Brazil.

INTRODUCTION

Globally, counterfeiting and piracy has caused for U.S. companies an estimated annual loss of \$200 - \$250 billion in sales, and 750,000 jobs total. Today, counterfeit goods make up approximately 5-7% of world trade. Companies that pursue piracy and counterfeiting activities avoid paying taxes, are a threat to public health and safety, divert government resources, weaken the rule of law, and stifle innovation by discouraging companies from investing in new technologies.

AUDIOVISUAL PIRACY MARKET

Although the Brazilian government took positive counter piracy steps in 2004, the Brazilian music industry continued to suffer in 2005. According to the International Federation of the Phonographic Industry (IFPI), 54% of all music sold in Brazil is illegal. Of the estimated 11.2 million music buyers in Brazil, only 56% buy solely legitimate products, with the remaining 44% buying either both pirated and legitimate, or solely pirated goods. The average price of a pirated CD is approximately US\$2.00, making it extremely attractive for the majority of Brazil's population. Additionally, 85% of all DVDs and 65% of all CDs sold are pirated, and the country represents roughly 9.5% of the world's pirate market.

The demand for pirated goods has been created by a convergence of lax enforcement, high demand, low equipment costs for counterfeiting music, and the availability of smuggling routes through Paraguay and other neighboring countries.

Brazil still lacks official data on the economic damages caused by the sale of falsified products. It is estimated, though, that the Brazilian audiovisual sector loses US\$120 million a year from piracy.

Daniel Goldberg, Secretary for Economic Rights in the Ministry of Justice, affirmed on November 10, 2005 that piracy in Brazil is responsible for Gross Domestic Product (GDP) losses of roughly 30%. By this calculation, 2004's losses amounted to roughly US\$ 230 billion.

One should note, though, the difference between piracy seen in China and in Brazil. According to Paulo Skaf, the president

of the Federation of Industries of the State of São Paulo, approximately 80% of counterfeit merchandise sold in Brazil comes from abroad, whereas in China the illegal merchandise is mostly manufactured locally.

Action taken by the IFPI and its affiliated national group in Brazil, the Associação Brasileira dos Produtores de Discos (ABPD), along with the Brazilian music industry's anti-piracy organization, Associação Protetora dos Direitos Intelectuais Fonográficos (APDIF), resulted in the seizure of approximately 1.7 million pirated CDs and DVDs during the first quarter 2005. This is a 130% increase over the same period in 2004.

The success of the music industry's enforcement activities is most noticeable in São Paulo city, which has the highest level of music purchases, and also acts as a piracy hub. While São Paulo accounted for 18% of Brazil's pirated music market in late 2001, a 2004 survey indicated the state's share fell to 12% because reduced availability through stricter enforcement.

A significant step in the anti-piracy campaign came from a Congressional Anti-Piracy Commission set up to investigate piracy and counterfeit trade. The committee published a report detailing its results in June 2004, exposing a billion-dollar industry allegedly involving politicians, judges, civil servants and thousands of others. The report called for the indictment of over 100 people, including alleged heads of criminal organizations. This report has been forwarded to the Minister of Justice and the President of Brazil. One of the report's recommendations is the immediate creation of a national anti-piracy plan, including establishing a centralized public organization to co-ordinate the activities of government agencies and departments.

COUNTERFEITING AND PIRACY IMPACT ON BRAZIL

According to Andre de Almeida, president of the Piracy Combat Forum, out of every 100 computers in use in Brazil, 70 use pirated components and 64 use illegal software. Mr. Almeida also pointed out that a ten per cent drop in computer piracy would create as many as 13,000 jobs and increase tax revenues by US\$444 million (R\$1 billion).

It is estimated that tax evasion in just four sectors - clothing, sneakers, toys, and eyeglasses - comes to around US\$3.6 billion (R\$ 9 billion), according to an IBOPE study commissioned by the United States Chamber of Commerce and the American chapter of the Brazil-United States Entrepreneurial Council, in partnership with the Dannemann Siemsen Institute and Warner Bros Consumer Products.

A survey based on 602 interviews, conducted April 7-13, 2005, demonstrates that the heaviest consumers of pirated products are people aged 16-24. The study also shows that 70% of consumers were aware that some of the products they bought were counterfeit, and the price was the deciding purchasing factor.

MOTION PICTURE PIRACY

- Brazil represents 9.5% of the world's DVD & CD piracy market.
- The overall audiovisual piracy rate in 2004 was 30%, creating US\$120 million a year in lost revenue.

TOBACCO COUNTERFEITING

- 40 billion, or 1/3, of all cigarettes consumed in Brazil are counterfeit.
- There are 360 illegal brands sold in Brazil (counterfeit and contraband), creating a loss of roughly US\$2.61 billion.

RECORDING INDUSTRY PIRACY

- 54 percent of all records and music are pirated.
- 55,000 jobs lost over three years due to piracy.
- \$82 million in unpaid taxes.

TOY COUNTERFEITING

- 12 percent of all toys are counterfeit.
- 80,000 jobs lost due to toy counterfeiting.
- \$31 million a year in lost sales.

BUSINESS SOFTWARE PIRACY

- An estimated 64 percent piracy rate.
- Preliminary estimated trade losses due to software piracy in 2005 are US\$330 million.

OTHER COUNTERFEITING AND PIRACY

- 48 percent of all eyeglass sales are lost to piracy.
- 10 percent of all auto parts sold in Brazil are counterfeit.
- 5-7 percent of all medicines in Brazil are counterfeit.
- 90 percent of all video games sold in Brazil are illegal.

Sources: BRAZIL-U.S. US Business Council research 2004; IDC, Exame Magazine July 15, 2005 edition; Science and Technology Ministry.

SOFTWARE PIRACY

Software piracy continues to be a large problem for Brazil. In March of 2005, the Business Software Alliance (BSA) estimated that 64 percent of all software used in Brazilian computers was pirated. In March 2004, the estimate was 55 percent, and in 2003, BNAméricas estimated the problem at 61 percent.

IDC estimates that increased access to broadband internet contributes to greater software piracy because of faster downloading abilities. In 2004, the number of new internet users in Brazil reached 2 million, bringing the total user population to 17.1 million. The number of users with access to broadband grew by 70%, reaching 700,000 in 2004. According to IDC, though Brazilians increased spending on personal computers by US\$30 million in 2004, software purchases increased by less than half this value, an indication of the piracy problem.

Beyond increased internet accessibility, the Government of Brazil's insistence that government agencies use free open

source software, is hurting the development of the domestic industry and some U.S. software suppliers.

BLACK AND GRAY MARKET FRAUD

Like counterfeiting and piracy, the existence of large and sophisticated black and gray markets in Brazil means enormous business losses across many industries. Black Market fraud experts estimate that the Brazilian black market is worth \$20 billion, and that over 1.5 million jobs are lost due to these illegal activities. The most affected sectors are electronics, cigarettes, beverages, clothing, shoes, photographic equipment, and eyewear – these represent 63% of all goods seized by Brazilian customs officials in 2001.

GRAY MARKET FRAUD

The gray market consists of genuine products produced by a supplier that are then sold through either illegal channels or legitimate businesses that underreport profits to avoid taxes. Tax evasion by businesses is a significant problem for Brazil because business taxes account for more than 80 percent of all tax revenue. Recently, the McKinsey Global Institute reported that Brazil's gray market employs 50 percent of nonagricultural workers, up from 40 percent a decade ago.

An estimated 80 percent of retail food sales in Brazil and a quarter of soft drinks involve gray market companies that underreport sales, while an estimated 60 percent of clothing stores avoid taxes. 45 percent of all sales of wireless phones, digital cameras and portable stereos do not include required taxes. Of the 3.5 million computers sold in Brazil each year, only one third are legitimate. In 1999, Brazil's illegal market for desktop computer equipment was estimated at 50 percent of total sales. By December 2004, this increased to nearly 75 percent, and today is estimated at 65 percent.

These numbers show the breadth of unfair competition facing legitimate businesses. Additionally, it shows how, in some countries, extremely high taxes can prompt businesses to exit the formal economy. Such a causal tax-to-black market relationship in Brazil became clear after the recent implementation of Provisory Measurement 255, which reduced some taxes on IT parts by 9.25%. After this reduction, the PC market grew 44% and prices were reduced by 15% in less than three months.

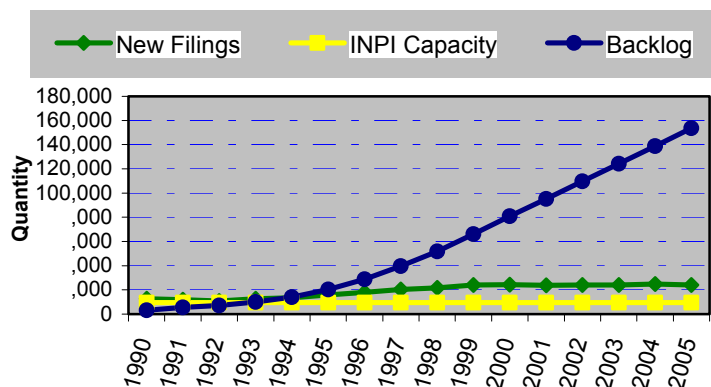
With over 72 million residents and the country's most dynamic economy, Brazil's southeast has lost more tax revenue to the gray economy than other regions. In 2003, the state of São Paulo lost an estimated US\$175 million because of software piracy; Rio de Janeiro US\$65 million; Minas Gerais US\$50 million and Espírito Santo US\$10.1 million.

NATIONAL INSTITUTE FOR INDUSTRIAL PROPERTY

Currently, Brazil's patent office, the National Institute for Industrial Property (INPI), has amassed a backlog of more than 120,000 patent applications and an estimated 580,000 trademark applications. Some specialists estimate that the

patent application backlog will reach approximately 155,000 by the end of 2005. In 2004, INPI received a \$10 million budget increase so they could hire an additional 500 employees, including 300 patent examiners. Unfortunately, even with these budget increases, the Brazilian government projects it will take five to six years to work through the backlogs.

The chart below, provided by INPI, shows the increasing number of applications compared to the limited processing capacity of INPI staff, which creates the enormous backlog.



Source INPI

PHARMACEUTICAL SECTOR INFRINGEMENTS

The GOB (Government of Brazil) has threatened to break patents for imported HIV/AIDS medication, saying generic equivalents can be produced in Brazilian laboratories. Often the intention to break patents is announced after pharmaceutical industries refuse to negotiate price reductions, indicating that the threat is being used as a bargaining chip.

Since 1996, through the National STD/AIDS program, Brazil has been distributing free antiretroviral drugs, which slow the body's reproduction of HIV. This program is widely recognized as one of the world's best. Unfortunately the program's costs continue to rise as the number of beneficiaries increases and newer, imported, and more expensive drugs are incorporated. Currently 160,000 people receive the free HIV/AIDS drugs, and that number is expected to rise to 180,000.

According to the GOB, the cost for the antiretroviral drug treatment program was approximately US\$260 million in 2004, four times the cost in 1997. This year the Health Ministry predicts the cost will rise 52 percent, making the program financially unsustainable.

To justify its threats, the GOB refers to a WTO clause that allows compulsory licensing in cases of national health emergencies.

ISSUANCE OF PHARMACEUTICAL PATENTS

Since 1999, all patent applications for pharmaceutical products or processes must be analyzed first by ANVISA (the National Agency of Sanitary Surveillance), which must give its *prior consent* before INPI issues a patent.

Since *prior consent* was not initially defined, some misunderstandings between ANVISA and INPI arose in the past, resulting in further delays. To help solve this issue, during the patent application for any pharmaceutical product or process, the two organizations agreed that ANVISA would give consent before INPI issues its final decision.

The main area of continuing disagreement between the two organizations is in granting a second use patent. Whenever ANVISA disagrees with granting a patent, it will call INPI to discuss the case and only after the deadlock is solved will the patent be granted.

COUNTERFEIT MEDICINES

Another growing concern in Brazil is the increasing number of counterfeit medicines. According to ANVISA, the number of reported findings of counterfeit medicines has recently increased. Though not as common as audiovisual products, street vendors sell counterfeit medicines, mainly birth control pills and Viagra®, for less than half of the regular price. Some of the medicines sold on the black market have been prohibited and and/or withdrawn from the Brazilian market by ANVISA because they were determined unsafe. Yet, sales of these medications via the internet grows and represents a serious threat to public health.

PROTECTION AGAINST COUNTERFEITING

Companies, as well as enforcement agencies, have taken proactive actions against piracy. There are a number of policy initiatives at in both the public and private sectors. IP holder companies are encouraged to contact local and international associations and seek legal counseling to avoid problems when entering or expanding in Brazil. Also, a number of technologies, such as holograms, smart cards, biometric markers and inks, can be employed to protect and authenticate products. These devices vary widely in sophistication and cost.

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